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## BOOK REVIEWS

*Limitations on the Treaty-Making Power of the United States.*

By Henry St. George Tucker, formerly Dean of the Law Schools of Washington and Lee University and George Washington University. Little, Brown & Company, Boston. 1915. pp. 444. \$5.

This treatise upholds a constitutional theory, directly opposed to that maintained by Charles Henry Butler in his work on the "Treaty-Making Power under the Constitution."

Mr. Butler rests that power in part on the general rights of the United States as a sovereign and, because of these, claims that it extends to every subject which can be the basis of negotiation and contract between any nations.

Mr. Tucker is of opinion that this position is untenable, and lays special stress (p. 98) on the Tenth Amendment to the Constitution, under which all rights not granted expressly or by implication to the United States are reserved to the States respectively or to the people. He quotes the leading pronouncements of the Supreme Court of the United States on the effect of this amendment and, as to its application to treaties, suggests (p. 106) that Mr. Butler "fails to realize that all the subjects of treaties, whether they be personal or property rights, in different countries may be lodged in different departments of the government, and subject to a different control than that of the treaty power . . . . At this writing (1914), Germany might by treaty cede a portion of her territory to Russia as a condition of peace, or *vice versa*, in order to terminate the world's greatest war. Could the United States by treaty cede any part of one of the States of the Union?"

It may be added that in the negotiations for ascertaining our Northwestern boundary culminating in the Ashburton treaty of 1842, this question assumed a very practical character. Great Britain claimed that lands which we insisted to be part of Maine really belonged to her, under the Treaty of 1783. Maine, however, was ready to give her assent to any reasonable disposition of the controversy, and secret arrangements and agreements between her government and the United States were made, which smoothed the way to this.

Mr. Tucker calls attention (p. 118) to the general practice, wherever representative institutions are maintained, to require parliamentary ratification in the case of treaties affecting individual rights. It was sought for the cession by England of Heligoland in 1890. Germany here acquired a rocky island, which seemed to the British foreign office of little worth, but has turned out to afford an important base of naval operations. That no member of Parliament opposed the measure seems some indication that much is not always gained in the way of discovering defects by bringing a treaty before a legislature.

As another pertinent illustration of the consequences of the theory for which Mr. Butler contends, Mr. Tucker thus refers (p. 120) to trial by jury: "Germany and Great Britain might by treaty agree to abolish trial by jury as to the citizens of each in the country of the other; but it is clear that no such treaty could be entered into by the United States, for this right is guaranteed in the Constitution itself, and cannot be the subject of diplomatic agreement."

With equal force he asks (p. 81), "Could it be claimed by anyone that a treaty between France and the United States, giving the citizens of each country the right to engage in business in the country of the other, would be effective in the State of Maine in allowing a citizen of France to open a bar-room for the sale of intoxicating liquors?"

The many treaties under which we stipulate to concede privileges of inheritance to citizens of other countries Mr. Tucker considers as simply widening the State laws on the subject, so as to remove the disabilities otherwise attaching to aliens, and in no way as declaring what those laws shall be (pp. 144, 416).

To the famous case of *Ware v. Hylton*<sup>1</sup> he devotes a chapter, treating the doctrine announced in the opinion as *obiter dictum*, and supporting the claim by a close and minute analysis of the issues really involved (p. 201).

Mr. Tucker, who served eight years with distinction as a member of Congress, takes strong ground (Chapter VIII) in favor of the right of that body to examine treaties before making appropriations to carry them out.

In Chapter IX he devotes fifty pages to an historical review of the instances in which other nations have complained to the

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<sup>1</sup> 3 Dallas 199.

United States on account of acts of one of the States of the Union. Nothing hitherto published constitutes a more valuable collection of diplomatic discussions of this nature.

One of the strong points of Mr. Tucker's treatise is the fulness of his reference to precedents, executive, judicial, legislative, and diplomatic. He quotes extensively, and with effect, from his father's work on the Constitution and devotes one chapter (Chap. XI) to the latter's report to the House of Representatives in 1887 on the Hawaiian treaty. J. Randolph Tucker was a sturdy defender of states rights, and his work as a constitutional student was thorough and exact. His son, who succeeded him in Congress, has also succeeded him, as the work under review well shows, as a keen and scholarly advocate of the doctrine of Jefferson, as to the proper construction of the grants of the Constitution.

S. E. B.

*Creditors' Rights and Remedies.* By Garrard Glenn. Published by Little, Brown & Company, Boston. 1915. pp. XLVI and 461.

This book contains the substance of a course of lectures delivered in the Columbia University Law School on the rights of creditors respecting their debtor's property. The author states his aim in preparing them to have been to harmonize, as far as possible, the various statutes and doctrines which are scattered through the body of our law so as to demonstrate the system afforded by our jurisprudence for the realization of debts out of the debtor's property. In other words, the author's aim was a synthesis of the law relating to creditors' rights.

A book which accomplishes this will prove of great value, for certainly there is no class of rights concerning which a lawyer is more often called upon to give advice than the rights of creditors. The present work does not profess to present an exhaustive discussion of any particular phase of the general subject. That is not its purpose. Many complete books are devoted to special topics, which are comprised within the general subject, such as executions, bankruptcy and receivers. Because, however, such is not its purpose it does not follow that the book is not of great value. It is exhaustive enough that in practice a lawyer often would not have to look further than this book for